



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2019-0638; FRL-10011-31-Region 4]**

**Air Plan Approval; North Carolina; Miscellaneous Permit Provisions Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), with letters dated September 18, 2009, September 16, 2016, and July 10, 2019. These SIP revisions amend several of North Carolina's rules regarding construction and operating permits. This action is being finalized pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2019-0638. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9009. Mr. Adams can also be reached via electronic mail at [adams.evan@epa.gov](mailto:adams.evan@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

EPA is approving SIP revisions submitted by DAQ, through letters dated September 18, 2009, September 16, 2016, and July 10, 2019. North Carolina's September 18, 2009,<sup>1,2</sup> submittal revises rule 15A North Carolina Administrative Code (NCAC) 02Q .0304, *Applications*, to make clarifying and ministerial edits. The September 16, 2016,<sup>3,4</sup> submittal revises 15A NCAC 02D .0101, *Definitions*, and 15A NCAC 02Q .0101, *Required Air Quality Permits*; .0103, *Definitions*;

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<sup>1</sup> EPA received the submittal on September 22, 2009.

<sup>2</sup> EPA received a supplemental submittal of corrected redline/strikeout changes for 02Q Section .0304 on June 7, 2019. See the docket for this action.

<sup>3</sup> EPA received the submittal on October 4, 2016.

<sup>4</sup> EPA notes that Section 02Q .0203, *Permit and Application Fees* was submitted as well. However, this Section is not approved into the SIP, and is not appropriate for the SIP. EPA will therefore not take action on this Section.

and .0104, *Where to Obtain and File Permit Applications*, to make clarifying and administrative updates. Finally, the July 10, 2019, submittal readopts, and makes clarifying and ministerial edits to the following: 15A NCAC 02Q .0101, *Required Air Quality Permits*; .0103, *Definitions*; .0104, *Where to Obtain and File Permit Applications*; .0105, *Copies of Referenced Documents*; .0106, *Incorporation by Reference*; .0107, *Confidential Information*; .0108, *Delegation of Authority*; .0109, *Compliance Schedule for Previously Exempted Activities*; .0110, *Retention of Permit at Permitted Facility*; and .0111, *Applicability Determinations*.<sup>5</sup>

EPA published a notice of proposed rulemaking (NPRM) proposing approval of the aforementioned North Carolina SIP revisions on April 27, 2020. *See* 85 FR 23272. The details of North Carolina's submissions and the rationale for EPA's actions are explained in the April 27, 2020, NPRM. Comments were due on May 27, 2020.

## **II. Response to Comments**

EPA received two comments on the April 27, 2020, NPRM. One comment was in support of EPA's proposed action, and the other comment was adverse. A summary of the adverse comment and EPA's response is provided below.

**Comment:** The Commenter asks why EPA needs to approve this SIP revision and suggests that states should "take primacy over their SIPs" once EPA has initially approved them. The Commenter also states that EPA should not approve this SIP revision and should allow states to take control over their programs.

**Response:** As explained herein and in the April 27, 2020, NPRM, DAQ requested this SIP revision, which amends several SIP-approved rules pertaining to construction and operating

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<sup>5</sup> On July 10, 2019, EPA received several SIP revisions. EPA is only acting on the changes to North Carolina's SIP as described in this notice. EPA will act on the other SIP revisions in separate rulemakings.

permits. Pursuant to CAA section 110(k)(3), 42 U.S.C. 7410(k)(3), “EPA shall approve” a SIP revision “if it meets all of the applicable requirements” of the Act. Thus, as a matter of law, EPA is required to approve a SIP revision if it meets the Act’s requirements, as these North Carolina SIP revisions do. To the extent the Commenter is suggesting that EPA take action beyond this particular SIP revision, such a comment is outside the scope of this rulemaking.

### **III. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 15A NCAC 02D .0101, *Definitions*, state effective January 1, 2015;<sup>6</sup> 15A NCAC 02Q .0101, *Required Air Quality Permits*; .0103, *Definitions*; .0104, *Where to Obtain and File Permit Applications*; .0105, *Copies of Referenced Documents*; .0106, *Incorporation by Reference*; .0107, *Confidential Information*; .0108, *Delegation of Authority*; .0109, *Compliance Schedule for Previously Exempted Activities*; .0110, *Retention of Permit at Permitted Facility*; and .0111, *Applicability Determinations*, state effective April 1, 2018; and 15A NCAC 02Q .0304, *Applications*, state effective January 1, 2009. These changes are either non-substantive or otherwise necessary to clarify applicability. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully

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<sup>6</sup> The effective date of the change to 15A NCAC 02D .0101 made in North Carolina’s September 16, 2016 SIP revision is January 1, 2016. However, for purposes of the state-effective date at 40 CFR 52.1770(c), that change to North Carolina’s rule is captured and superseded by North Carolina’s update in a March 21, 2018 (state effective January 1, 2018) SIP revision, which EPA previously approved on April 10, 2019 (84 FR 14308).

federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>7</sup>

#### **IV. Final Action**

EPA is approving 15A NCAC 02D .0101, *Definitions*, submitted September 16, 2016; 15A NCAC 02Q .0101, *Required Air Quality Permits*; .0103, *Definitions*; .0104, *Where to Obtain and File Permit Applications*; .0105, *Copies of Referenced Documents*; .0106, *Incorporation by Reference*; .0107, *Confidential Information*; .0108, *Delegation of Authority*; .0109, *Compliance Schedule for Previously Exempted Activities*; .0110, *Retention of Permit at Permitted Facility*; and .0111, *Applicability Determinations*, submitted July 10, 2019; and 15A NCAC 02Q .0304, *Applications*, submitted September 18, 2009. EPA is finalizing the changes above to North Carolina's SIP submitted on September 18, 2009, September 16, 2016, and July 10, 2019.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, if they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>7</sup> *See* 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. These actions are not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 2020.

Mary Walker,

Regional Administrator,

Region 4.



For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart II – North Carolina**

2. In § 52.1770 amend Table 1 to paragraph (c) by:

a. Under “Subchapter 2D Air Pollution Control Requirements” revising the entry for “Section .0101”; and

b. Under Subchapter 2Q Air Quality Permit Procedures by revising the entries for “Section .0101”, “Section .0103”, “Section .0104”, “Section .0105”, “Section .0106”, “Section .0107”, “Section .0108”, “Section .0109”, “Section .0110”, “Section .0111”, and “Section .0304”.

The revisions read as follows.

**§ 52.1770 Identification of plan.**

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(c) \* \* \*

**(1) EPA APPROVED NORTH CAROLINA REGULATIONS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
<b>Subchapter 2D Air Pollution Control Requirements</b>				
<b>Section .0100 Definitions and References</b>				

Section .0101	Definitions	1/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
**	**	*	*	*
<b>Subchapter 2Q Air Quality Permits</b>				
<b>Section .0100 General Provisions</b>				
Section .0101	Required Air Quality Permits	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
**	**	*	*	*
Section .0103	Definitions	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
Section .0104	Where to Obtain and File Permit Applications	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
Section .0105	Copies of Referenced Documents	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	

Section .0106	Incorporation by Reference	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
Section .0107	Confidential Information	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
Section .0108	Delegation of Authority	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
Section .0109	Compliance Schedule for Previously Exempted Activities	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
Section .0110	Retention of Permit at Permitted Facility	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
Section .0111	Applicability Determinations	4/1/2018	[Insert date of Publication in Federal Register], [Insert citation of publication]	
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Section .0304	Applications	1/1/2009	[Insert date of Publication in Federal Register], [Insert citation of publication]	
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[FR Doc. 2020-14092 Filed: 7/16/2020 8:45 am; Publication Date: 7/17/2020]